

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

ROBERT MILLER §
VS. § CIVIL ACTION NO. 1:19cv181
SAM R. CUMMINGS §

MEMORANDUM OPINION REGARDING VENUE

Plaintiff Robert Miller, an inmate confined at the Skyview Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brings this civil rights complaint pursuant to 42 U.S.C. § 1983 against Sam R. Cummings, a United States District Judge in Lubbock, Texas.

The above-styled action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636 and the Local Rules for the Assignment of Duties to the United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Factual Background

Plaintiff claims the defendant stole \$400.00 from him by charging him filing fees for a lawsuit without setting his case for a jury trial and without giving plaintiff an opportunity to present his case to a jury.

Analysis

The Civil Rights Act, 42 U.S.C. §1981, *et seq.*, under which this case is brought, does not contain a specific venue provision. Accordingly, venue in civil rights cases is controlled by 28 U.S.C. § 1391. *Jones v. Bailey*, 58 F.R.D. 453 (N.D. Ga. 1972), *aff'd per curium*, 480 F.2d 805 (5th Cir. 1973).

When, as in this case, jurisdiction is not founded solely on diversity of citizenship, 28 U.S.C. § 1391 provides that venue is proper only in the judicial district where the defendants reside or in which the claim arose. Here, plaintiff complains of incidents which occurred in Lubbock, Texas. Further, the defendant is employed as a United States District Judge in Lubbock, Texas. The city of Lubbock is located in Lubbock County, Texas. Pursuant to 28 U.S.C. § 124, Lubbock County is located in the Lubbock Division of the United States District Court for the Northern District of Texas. Accordingly, venue for such claims is not proper in the Eastern District of Texas.

When venue is not proper, the court “shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” 28 U.S.C. § 1406(a). This action should be transferred to the Northern District of Texas. An appropriate order so providing will be entered by the undersigned.

SIGNED this 13th day of May, 2019.



Zack Hawthorn
United States Magistrate Judge